THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL MISCELLANEOUS APPEAL Nos. 1026 of 2007 & 1027 of 2007

COMMON JUDGMENT:

(per the HON'BLE SRI JUSTICE K.C.BHANU)

1. The short point that falls for consideration in these two appeals is whether the impugned orders dated 19.12.2007 passed by the learned Principal District Judge, Ranga Reddy in I.A. Nos. 4444 of 2007 & 4445 of 2007, in O.S. No.1177 of 2007, are in accordance with the proviso to Rule 3 of Order XXXIX of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.') ?

2. The respondents herein filed O.S. No.1177 of 2007 on the file of the Principal District Judge, Ranga Reddy, against the petitioners herein, for specific performance of agreement of sale dated 04.08.2006, and made I.A. No.4444 of 2007 therein for grant of ad-interim injunction restraining the respondents therein and their men from alienating the suit schedule property pending disposal of the suit, and also made I.A. No.4445 of 2007 for ad-interim injunction restraining the respondents therein and their men from interfering with their possession and enjoyment of the suit schedule property.

3. It is not necessary to set out the averments in the affidavits accompanying the petition in the I.As. for grant of

reliefs claimed by the petitioners therein, in the trial Court.

4. We have heard both the counsel at length.

5. The learned counsel for the appellants/defendants contended that the impugned orders do not contain any reasons as contemplated under the proviso to Rule 3 of Order XXXIX of the C.P.C., and so they are liable to be set aside. For that proposition he placed strong reliance on a decision of the Apex Court in *D.R.Chawla & others v. Municipal Corporation of Delhi*[1] and also a Division Bench of this Court in *Kasuganti Anantarao & another v. Kasuganti Aruna & another*[2]

6. On the other hand, the learned senior counsel Sri E.Manohar appearing for the respondents contended that after satisfying itself, the trial Court passed the impugned orders and that the Orders need not contain the reasons and they shall be deemed to contain the reasons atleast by implication even if they are not stated so in so many words. For that proposition, he relied on a decision in *A.Venkatasubbaiah Naidu v. Chellappan &others*[3]

7. Proviso to Rule 3 of Order XXXIX C.P.C. reads as follows:

> "Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, …"

8. In the decision in *A.Venkatasubbaiah Naidu's* case (3 supra), relied on by the learned senior counsel appearing for the respondents, it is observed as follows:

(para 13)

> "What would be the position if a Court which passed the order granting interim exparte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39. In our view such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. …"

The Apex Court further held as follows:

> "So, we are of the view that in a case where the mandate of Order 39, Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force."

From the above, it is clear that the order shall be deemed to contain the reasons atleast by implication even if they are not stated so in so many words.

9. Basing on the said decision, it is vehemently contended that after applying its mind, the trial Court passed the impugned orders and therefore they need no interference.

10. On the other hand, in *D.R.Chawla's* case (1 supra) relied on by the learned counsel for the appellants, it is held as follows:

> "The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "the court shall in all cases, except where

it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite-party". The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. .."

11. In *Kasuganti Anantarao's* case (2 supra) relied on by the learned counsel for the appellants, it is held as follows:

"… since as has been held earlier the provisions of Rule 3 read with proviso of Order 39 C.P.C. are mandatory and any non-observance of such mandatory procedure renders the order void …"

12. The impugned Orders read as follows:

(a) I.A. No.4444 of 2007

"Heard the petitioner counsel and perused the affidavit filed along with the petition, the plaint and all the documents filed along with the plaint. The respondents 1 to 8 are the owners of an extent of Ac.40.00 guntas of land in Sy. No.78/B of Hafeezpet village, Serilingampally Mandal. Vide Document No.3, the Memorandum of Understanding dt. 22.3.2006 shows that the respondents herein agreed to enter into development in respect of Ac.20.00 out of Ac.40.00 guntas of land with 1st petitioner. Consequently

under the Agreement of Sale dt. 4.8.2006 i.e. document No.5, the Vendors i.e. the respondents agreed to sell an extent of Ac.20.00 guntas of land as per the schedule annexed to deed to the vendees i.e. the petitioners herein for sale consideration of Rs.4.80 crores per acre and paid Rs.25.00 crores and under the terms of the said agreement of sale the respondents specifically agreed that the petitioners are entitled to enter into agreement with the third parties regarding the development of suit schedule land, document No.22 Joint Development Agreement dt. 28.12.2006 shows that as per the terms of the suit agreement of sale, the 1st petitioner had entered into Development Agreement with Sunway City India Pvt. Limited, for Development of the suit land and the plaintiffs jointly, photos filed along with the plaint shows that developmental activities are going on in the suit schedule land and that with a view to circumvent the rights that are available to the petitioners under the agreement of sale, the respondents are trying to alienate the suit schedule land to third parties. The above documents establish the prima-facie case of the petitioners and the balance of convenience also is in favour of the petitioners.

In view of the apprehension of the petitioners/plaintiffs if urgent notice ordered the object of the petitioners will be defeated due to delay in serving of notice on the respondents. Having regard to the facts and circumstances of the case, issue exparte Interim Injunction in favour of the petitioners and against the respondents restraining the respondents, their men, agents and anybody claiming through them from alienating the suit schedule land in any manner till 21.1.2008 subject to compliance of the provisions of Order 39 Rule 3 of C.P.C.

Issue urgent notice to the respondents through court and registered post."

(b) I.A. No.4445 of 2007:

"Heard the petitioner counsel and perused the affidavit filed along with the petition, the plaint and all the documents filed along with the plaint. The respondents 1 to 8 are the

owners of an extent of Ac.40.00 guntas of land in Sy. No.78/B of Hafeezpet village, Serilingampally Mandal. Vide Document No.3, the Memorandum of Understanding dt. 22.3.2006 shows that the respondents herein agreed to enter into development in respect of Ac.20.00 out of Ac.40.00 guntas of land with 1st petitioner. Consequently under the Agreement of Sale dt. 4.8.2006 i.e. document No.5, the Vendors i.e. the respondents agreed to sell an extent of Ac.20.00 guntas of land as per the schedule annexed to deed to the vendees i.e. the petitioners herein for sale consideration of Rs.4.80 crores per acre and paid Rs.25.00 crores and under the terms of the said agreement of sale the respondents specifically agreed that the petitioners are entitled to enter into agreement with the third parties regarding the development of suit schedule land, document No.22 Joint Development Agreement dt. 28.12.2006 shows that as per the terms of the suit agreement of sale, the 1st petitioner had entered into Development Agreement with Sunway City India Pvt. Limited, for Development of the suit land and the plaintiffs jointly, photos filed along with the plaint shows that developmental activities are going on in the suit schedule land and that with a view to circumvent the rights that are available to the petitioners under the agreement of sale, the respondents are trying to alienate the suit schedule land to third parties. The above documents establish the prima-facie case of the petitioners and the balance of convenience also is in favour of the petitioners.

In view of the apprehension of the petitioners/plaintiffs if urgent notice ordered the object of the petitioners will be defeated due to delay in serving of notice on the respondents. Having regard to the facts and circumstances of the case, issue exparte Interim Injunction in favour of the petitioners and against the respondents restraining the respondents, their men, agents and anybody claiming through them in interfering with the possession and enjoyment of the petitioners over the suit schedule land in any manner till 21.1.2008 subject to compliance of the

provisions of Order 39 Rule 3 of C.P.C.

Issue urgent notice to the respondents through court and registered post."

13. A perusal of the impugned orders, it is clear that certain averments with reference to the pleadings are mentioned. The only reason which can be seen from the above impugned orders for dispensing with the notice to the respondents therein, is that if notice was ordered the object of the petitioners would be defeated due to delay in serving the notices. Mere reproduction of the words mentioned in Order XXXIX Rule 3 of the C.P.C. would not be a proper compliance of the said provision.

14. In view of the decision in *D.R.Chavla's* case (1 supra), recording of reasons for granting exparte injunction cannot be held to be a mere formality. The court must satisfy itself about the gravity of the situation and necessarily record reasons for granting exparte injunction. No satisfactory reasons have been stated in the above impugned orders to infer that the object of granting exparte ad-interim injunction would be defeated if notice is ordered.

15. One of the salutary principles of principles of natural justice is spelling out all the reasons in the order made. Right to reason is an indispensable part of sound judicial system. Further more, the statute contemplates recording of reasons before granting exparte injunction. When it spears to the Court that the object of granting injunction is

defeated by delay, then only an expate ad-interim injunction can be granted after recording reasons for dispensing with notice to the respondents. Therefore, we are of the clear opinion that the impugned orders do not contain any reasons at all as required under proviso to Rule 3 of Order XXXIX of the C.P.C.

16. Accordingly, the impugned orders are set aside. The matter is remitted to the trial Court to dispose of the I.As. within a period of one month from the date of receipt of a copy of this Order. No costs.

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JUSTICE

D.S.R.VARMA

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JUSTICE

K.C.BHANU

19.01.2008
DRK

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[1] (1993) 3 SCC 162
[2] 1985 II ALT Reports 339
[3] AIR 2000 Supreme Court 3032